IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4556 of 1987

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KASAMMIYA BANAMIYA SHAIKH - Petitioner(s)

Versus

DIVISIONAL CONTROLLER - Respondent(s)

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Appearance :

MR SUBRAMANIAM IYER for Petitioner No(s).: 1.
MR HARDIK C RAWAL for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI
Date : 19/07/2005

ORAL JUDGMENT

1. This petition is directed against the judgment and award dated 24th July, 1986 passed by the `Industrial Tribunal, Ahmedabad in Reference [I.T.] No. 943 of 1983, whereby the petitioner was denied back wages.

2. The short facts of the case are that the

petitioner was working as Art A Electrician in the Surat Division of the respondent Corporation. On account of misbehaviour with the Head Mechanic and further leaving the place without prior permission, the petitioner was charge-sheeted and thereafter departmental inquiry was initiated against him. Since the charges levelled against the petitioner were proved, he was dismissed from the service w.e.f. 2nd December, 1997.

2.1. Feeling aggrieved by the dismissal order, the petitioner preferred an Appeal before the First Appellate Authority, which also came to be rejected. Pursuant to that the petitioner preferred Second Appeal and the Appellate Board after considering the case on merits, allowed the said appeal and directed the respondent to reinstate the petitioner in service without back wages.

2.2. The petitioner being aggrieved by the denial of back wages raised an industrial dispute which was ultimately referred to the Industrial Tribunal, for adjudication. The Industrial Tribunal after appreciating the materials produced before it, passed the impugned award. Hence, this petition.

3. I have heard the learned counsel for the parties. Having perused the materials produced on record, it transpires that the Industrial Tribunal while denying the back wages has taken into consideration the default card wherein, it was found that there number of defaults committed by the petitioner in the past. Moreover in view of the principle laid down by the Apex Court in the case of **General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005 (6) S.C. p. 137** wherein it has been held that an order of payment of back wages should not be passed in a mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Thus, I am in complete agreement with the reasonings adopted and findings arrived at by the Industrial Tribunal while denying the back wages and find no reason to interfere.

4. In the result, the petition is dismissed. The impugned award passed by the Industrial Tribunal is confirmed. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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